

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

JAMES SURGENOR,

Case No. 1:16-cv-1179

Plaintiff,  
vs.

Judge Timothy S. Black  
Magistrate Judge Karen L. Litkovitz

GARY MOORE, *et al.*,

Defendants.

**DECISION AND ENTRY  
ADOPTING THE REPORTS AND RECOMMENDATIONS (Docs. 4, 12)  
AND THE SUPPLEMENTAL REPORT AND RECOMMENDATIONS (Doc. 13)  
OF THE UNITED STATES MAGISTRATE JUDGE  
AND OVERRULING PLAINTIFF'S OBJECTIONS (Doc. 26)**

This case is before the Court pursuant to the Order of General Reference in the United States District Court for the Southern District of Ohio Western Division to the United States Magistrate Judge Karen L. Litkovitz. Pursuant to such reference, the Magistrate Judge reviewed the pleadings filed with this Court and issued two Reports and Recommendations (Docs. 4, 12) as well as a Supplemental Report and Recommendations (Doc. 13).

Plaintiff filed untimely objections (“Objections”) (Doc. 26).<sup>1</sup>

As required by 29 U.S.C. § 636(b) and Fed. R. Civ. P. 72(b), the Court has reviewed the comprehensive findings of the Magistrate Judge and considered *de novo* all of the filings in this matter. Upon consideration of the foregoing, the Court does determine that the Reports and Recommendations (Docs. 4, 12) and the Supplemental Report and Recommendations (Doc. 13) should be and are hereby **ADOPTED** in their entirety. Accordingly:

1. The Reports and Recommendations (Docs. 4, 12) and Supplemental Report and Recommendations (Doc. 13) are **ADOPTED**;
2. Plaintiff’s Objections (Doc. 26) are **OVERRULED**;
3. Plaintiff’s motion for preliminary injunctive relief (Doc. 9) is **DENIED**;
4. The claims asserted in Plaintiff’s complaint (Doc. 3) are **DISMISSED**;


---

<sup>1</sup> Plaintiff’s Objections are not well taken. Initially, the Objections—which were required to be filed by June 22, 2017, but were not filed until July 12, 2017—are untimely, and fail as a matter of law. *See Jones v. Warden, Ross Corr. Inst.*, 2013 U.S. Dist. LEXIS 169658, at \* 4 (S.D. Ohio Dec. 2, 2013) (“failure to file timely objections not only waives the right to *de novo* review of a Magistrate’s Report and Recommendation, but dispenses with the need for the district court to conduct any review.”). In any event, the Objections fail on the merits. First, the Objections argue that Plaintiff properly stated an Eighth Amendment claim premised on Defendants’ allegedly discriminatory, threatening, and derogatory comments, but the Magistrate Judge correctly explained that conduct does not violate the Constitution. (Doc. 13 at 3); *see also Johnson v. Dellatifa*, 357 F.3d 539, 546 (6<sup>th</sup> Cir. 2004) (“harassment and verbal abuse . . . do not constitute the type of infliction of pain that the Eighth Amendment prohibits.”). Second, the Objections argue that Defendants Mohr, Schweitzer, and Luneke should be liable in their supervisory capacities, but the Magistrate Judge correctly held that *respondeat superior* does not impute 28 U.S.C. § 1983 liability onto supervisory personnel. (Doc. 4 at 9) (citing *Wingo v. Tenn. Dep’t of Corr.*, 499 F. App’x 453, 455 (6<sup>th</sup> Cir. 2012)).

5. Plaintiff's motion to amend the complaint (Doc. 10) is **GRANTED** to the extent it seeks leave to correct the name of Defendant Moore to "Mohr," and to the extent it seeks leave to add: (A) Plaintiff's Eighth Amendment claim regarding deprivation of meals by Defendants Berry, Holley and Ley; (B) Plaintiff's First Amendment retaliation claim against Defendants Bell, Berry, and Saylor, and (C) Plaintiff's First Amendment claim alleging a violation of Plaintiff's right to freely exercise his Christian religion against Defendant Cherry Holmes;
6. To the extent Plaintiff's motion to amend the Complaint (Doc. 10) seeks to add additional claims and/or additional defendants, it is **DENIED**.

**IT IS SO ORDERED.**

Date: 12/22/17

  
\_\_\_\_\_  
Timothy S. Black  
United States District Judge